

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. Order/BM/JR/2024-25/ 30941]**

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**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.**

**In respect of**

**Sunil Arjan Lulla**

**PAN: AAAPL4639E**

**In the matter of Eros International Media Limited**

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**Background**

1. Whole Time Member of Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had passed an ex-parte Interim Order dated June 22, 2023 in the matter of Eros international Media Limited (hereinafter referred to as “Eros”/ “Company”) wherein it was *inter-alia* directed that:  
*"Noticee 4 (Mr. Sunil Arjan Lulla) was restrained from holding the position of a Director or a Key Managerial Personnel in any listed company, including Eros, or its subsidiaries or any SEBI registered intermediary until further Orders."*
2. The above direction was confirmed by SEBI vide order dated October 13, 2023. It was observed that Mr. Sunil Arjan Lulla (hereinafter referred to as “Noticee”) failed to comply SEBI directions and did not resign from directorship of the Company. As the Noticee allegedly failed to comply with the order of SEBI, Adjudication proceedings was initiated in respect of him.

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. SEBI, vide communique dated March 18, 2024, appointed the undersigned as the Adjudicating Officer under section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') r/w section 19 of the SEBI Act to inquire into and adjudge under sections 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") for the alleged non-compliance.

### **SHOW CAUSE NOTICE, REPLY AND HEARING**

4. Show Cause Notice dated April 22, 2024 (hereinafter referred to as 'SCN') was issued in terms of Rule 4(1) of the Rules read with section 15-I of the SEBI Act to the Noticees alleging the following:
  - a) As the Noticee failed to comply SEBI directions (given vide ex-parte interim order dated June 22, 2023) and did not resign from directorship of the Company, vide email dated June 27, 2023 Exchanges (NSE and BSE) were advised to provide status of compliance of SEBI directives and were also advised to seek comments from him.
  - b) Vide email dated July 07, 2023 exchanges informed that *"an Appeal has been filed today inter alia by Noticee No. 4, Mr. Sunil Lulla before Securities Appellate Tribunal to set aside the ex-parte interim order dated 22 June 2023 passed by SEBI ("Order") and stay of the operation of the Order"*
  - c) The Hon'ble Securities Appellate Tribunal ("**SAT**") vide Order dated August 22, 2023 ("**SAT Order**"), while disposing of the appeal had directed as under:

*"22. In our opinion, the contention that no prima facie case existed in passing of the Interim Order is wholly erroneous. The investigation has prima facie revealed siphoning of funds to various entities of the appellant Company which cannot be lost sight of and in the absence of any cogent reply being given we also find that some of the content advance entities being not existent also leads*

*to a presumption of diversion of funds in the form of content advance and trade receivable.*

*23. ...*

*24. In view of the aforesaid, we do not find any reason to interfere with the Interim Order at this stage and we dispose of the appeal directing the appellants to file reply /objection along with a stay vacation application to the ad-interim ex-parte order dated 22<sup>nd</sup> June, 2023 within three weeks from today. If such a reply along with the stay vacation application is filed, the WTM will fix a date within a week from date of filing the reply by the appellants. The WTM will provide an opportunity of hearing to the appellants and after considering the material evidence that has been placed by them will pass appropriate order within three weeks thereafter.”*

- d) As even after SAT order dated August 22, 2023, Noticee failed to comply with SEBI directions, vide email dated August 24, 2023, he was advised to comply with SEBI Order. However, it is alleged that instead of stepping down as director of the Company, Noticee vide letter dated August 25, 2023, submitted that he has restrained himself from participating in the affairs of Eros or in the affairs of any of its subsidiaries or any SEBI registered intermediary, as a director or KMP.
- e) As Noticee had failed to comply SEBI directions and did not step down as director of Eros, vide letter dated September 07, 2023, Chairman of Board of Eros, Mr. Dharendra Swarup, was advised to initiate the process of removal of Noticee as Director as per procedure laid down u/s 169 of the Companies Act, 2013.
- f) Vide letter dated September 15, 2023, the Chairman of the Board informed that SEBI interim ex-parte Order dated 22<sup>nd</sup> June, 2023 is an interim measure pending investigation and proceedings, and the removal of Noticee under Section 169 of the Companies Act, 2013 at this stage would be pre-mature and if Noticee is removed, then the Board will not be entitled to re-appoint him. Further, Chairman of Board of Eros vide email dated September 18, 2023 informed that the Company has taken legal opinion and vide resolution restrained Noticee from participating in the affairs of the Company.
- g) In view of above, it is alleged that Noticee has failed to comply with the directions passed against him vide SEBI order dated June 22, 2023. Further, in the Confirmatory Order dated October 13, 2023 passed in the matter of Eros, the directions of the Interim Order were confirmed without any modification for Noticee.

5. The Noticee vide email dated May 15, 2024 submitted, inter alia, the following:

- *Prior to the issuance of the aforementioned orders, I held the position of Managing Director within Eros. Therefore, it is evident that I was an incumbent Director of Eros at the time the orders were issued.*
- ***I have fully complied with the order by my following acts/non acts:***
  - i. *I have not dealt in Securities Market.*
  - ii. *I have restrained myself from the holding position of Director or KMP in any listed company by abstaining from accepting any new assignment.*
  - iii. *I have abstained from accepting any new Directorship within SEBI registered Intermediary.*
  - iv. *Regarding ongoing Directorship in EROS, I restrained myself as a Director by not participating in meeting, decision making processes and signing any new agreements.*
- *These actions demonstrate my unwavering commitment to complying with the directives set forth in the order.*
- *The aforementioned compliance with the order was duly communicated to the stock exchanges and the Securities and Exchange Board of India (SEBI). Neither SEBI nor the stock exchanges have provided any comments or clarification regarding my compliance. It is noteworthy, that SEBI has not issued any corrigendum order or modification order for the removal of my existing directorship, despite their assertion that the “restraint” should be interpreted as “removal”.*
- *SEBI is wrongly expanding the scope of its order by alleging me, that I failed to comply with order, as I did not voluntarily resign from Directorship or stepdown as Director of EROS. However, there is no order from SEBI either removing me from Directorship or directing me to resign from Directorship or directing me to stepdown as Director.*
- *While SEBI possesses the authority to enforce orders by engaging other agencies such as Depositories, DPs, and Stock Exchanges, it lacks the power to freeze Director Identification Numbers (DINs) at the Registrar of Companies (ROC). This indicates that the authority for removal of Director does not vest with SEBI.*
- *SEBI, established as the regulator of the capital market through parliamentary statutes, does not hold the authority to remove directors. Even if such authority were vested, SEBI should issue directives explicitly for the removal of a director, rather than restraining them from directorship. Notably, SEBI has not issued any orders for my removal from directorship.*
- *I came across NSE Circular dated 20<sup>th</sup> June 2018, an attempt by SEBI to assume the power, it does not have by pressurizing Stock Exchanges. Copy of this Circular is enclosed. Surprisingly, all Exchanges had interpreted the exact same meaning of SEBI letter dated 14<sup>th</sup> June, 2018 and assume the responsibility to execute the SEBI order with regard to restraintment of person and ready to treat same as Voluntary Resignation.*

- *SEBI's act of writing letter giving instructions to Stock Exchanges on 14<sup>th</sup> June 2018 and compelling to issue notification to listed company suggest that SEBI is quite aware of not enjoying power of removal of Director. This letter is only an instruction and not a rules/ regulations/notification and neither available on web site of SEBI. It is not even a clarification. This letter was an attempt to enjoy power of removal of Director in listed company via Stock Exchange and force listed company not to appoint some one as Director or to remove someone as director by simply issuing order of restraining them.*
- *I request AO to refer para 3 of NSE circular to listed Companies bearing number Ref No: NSE/CML/2018/24 June 20, 2018*  
*"3. In case the existing director is restrained from acting as director by virtue of any SEBI Order or any other such authority, the director shall voluntarily resign with immediate effect, failing which the listed entity shall initiate the process of removal of such director in terms of relevant sections of the Companies Act, 2013, and inform the Exchange about the same."*
  - a) *In para 3 above circular, it is clear that SEBI can only pass order of Restrain from acting as Director and can not pass order of Removal of Director.*
  - b) *However, SEBI is trying to enforce removal of Director by forcing voluntary resignation or removal process in term of section 169 of Companies Act by pressuring Listed Company through Stock Exchange.*

6. Vide the same email dated May 16, 2024, the Noticee sought certain documents including the following:

- a) *Please provide SEBI Act / Rules /Regulations / Guidelines wherein it is mentioned that Order of restraintment as Director Should be treated as Removal of Directorship. This will help me to defend the allegation as per natural justice.*
- b) *Please clarify and provide evidence, where exactly in order SEBI had issued order of removing me as Director of EROS.*
- c) *Provide Investigation Report of SEBI together with Annexure and Action wherein Adjudication for non-compliance of Order is recommended against me.*
- d) *As mention in Annexure I of SCN please provide Annexure X.*
- e) *Provide Original Order dated February 23, 2024 appointing AO.*
- f) *Communique dated February 26, 2024.*
- g) *Order dated March 14, 2024 where Competent Authority Approved transfer of the Adjudication Proceeding in respect of Sunil Lulla.*

7. Vide letter dated June 6, 2024, the relevant documents as sought above and available on records including the investigation report in the matter along with annexures was provided to the Noticee. Further, vide email dated July 4, 2024, the Noticee was advised to submit his reply on or before July 11, 2024. Not being satisfied with the documents provided to him, the Noticee vide email dated July 12, 2024 sought further documents and submitted, inter alia, "*I once again refute all*

*allegations in the SCN and submit that I have fully complied with the order by my acts/ non acts. SEBI deliberately and incorrectly, expanding the scope of its order by alleging me that I have failed to comply with order of SEBI, as I did not voluntarily resign from Directorship or stepdown as Director of EROS. However, there is no order from SEBI either removing me from Directorship or directing me to resign from Directorship or directing me to stepdown as Director. I have correctly understood that, "Restraintment" cannot be read or treated as "Removal".*

8. Vide letter dated August 1, 2024, once again the relevant documents available on record was provided to him. Further, vide email dated August 8, 2024, Noticee was advised to submit his reply on or before August 14, 2024. In the interest of natural justice, an opportunity of personal hearing was given to the Noticee to appear before the undersigned on September 6, 2024 vide notice dated August 22, 2024. He did not appear on the said date. Vide email dated September 5, 2024, the Noticee replied to the SCN stating, inter alia, the following:

- *At the outset, I would like to state the SCN is ambiguous as to which part(s) of the Orders have not been complied with, and consequently what offence(s) (if any) have been committed. Any show cause which does not clearly lay down the offence in precise and unambiguous terms is non est, vitiated and bad in law.*
- *Furthermore, at the very outset, I would like to state unequivocally that I have fully complied with all directions in the Orders, specifically so, by the following commissions / omissions:*
  - i. I have not dealt with securities in the securities market, in compliance with the directions of the Orders, as enumerated above;*
  - ii. I have restrained myself from the holding the position of a director or a Key Managerial Personnel in any listed company by abstaining from accepting any new assignment;*
  - iii. I have abstained from accepting any new directorship with any SEBI registered intermediary;*
  - iv. I have restrained myself as a Director in Eros International Media Limited by not participating in any meeting, decision making processes and /or signing any new documents.*
- *These actions more than clearly demonstrate my compliance with the directives set forth in the said Orders. and any suggestion to the contrary can, at best, be deemed to be motivated.*
- *Additionally, it would be pertinent to mention that I have also resigned from my position as a Director in the company with effect from July 31, 2024.*
- *The SEBI investigation into Eros International Media Limited ("EIML") in above captioned matter has been ongoing for nearly three years now. On 22nd June 2023, the Ld. Whole Time Member ("WTM") of the Securities Exchange Board of India*

*(“SEBI”) passed an interim ex-parte order bearing reference No. WTM/AB/CFID-SEC2/27715/2023-24 (“Ex-Parte Order”) against Eros inter alia alleging “potential transgressions” of the Securities and Exchange Board of India Act, 1992 (“SEBI Act”) and of provisions of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2005 (“PFUTP Regulations”), applied retrospectively. EIML challenged the Ex-Parte Order before the Hon’ble Securities Appellate Tribunal (“SAT”) where the SAT vide its order dated August 22, 2023 (“SAT Order”), without going into the merits of the matter, inter-alia directed EIML to file an appropriate reply / objection to the Ex-Parte Order before the Ld. Whole Time Member (“WTM”) and apply for vacation / modification of the said order and further directed the WTM to decide the application, uninfluenced by the order passed by SAT, after providing EIML an opportunity of free and fair hearing. Accordingly, EIML filed a reply/ objection to the Ex-Parte Order before the Ld. Whole Time Member and applied for a vacation/ modification of the same. Uninfluenced by the said reply / objection, SEBI passed a Confirmatory Order dated October 13, 2023 (“Confirmatory Order”) by which SEBI confirmed the Ex-Parte Order dated June 22, 2023. An appeal was filed against the same before the Hon’ble Securities Appellate Tribunal, which was disposed directing SEBI to complete its long-standing investigation within a specified 3 week period.*

- *It seems that in light of the fact that I restrained myself from participating in the affairs of the company in contra-distinction to not resigning from the position of a director, SEBI has now decided to conduct an adjudication proceedings in accordance with the provisions of the SEBI Act, 1992 read with the Adjudication Rules, 1995. It is pursuance of the same that SEBI wrote to the stock exchanges seeking status of compliances of SEBI’s directives, pursuant to which communications were exchanged with the stock exchanges. Copies of extracts of some of these communications between SEBI and the exchanges, were made available to me as redacted annexures to a communication dated April 22, 2024 from SEBI.*
- *Thereafter, SEBI wrote to the Chairman of the Board of the company, Mr. Dhirendra Swarup advising him to initiate the process of my removal vide letter dated September 07, 2023. The said communication also made a reference to the disposal of the appeal by the Hon’ble Securities Appellate Tribunal by it’s order dated August 22, 2023 implying, to some degree, that SAT had endorsed and / or directed me to step down as an interpretation of the phrase “restrained”.*
- *It is perhaps relevant at this stage to refer to SEBI’s power to restrain vis a vis its power to remove a director of a company under the provisions of the SEBI Act, 1992. And in furtherance thereto, it is perhaps relevant to refer to a Memo of SEBI bearing no. SEBI/HO/CMD/2018/17159 dated June 14, 2018, which evidences both:*
  1. *the lack of SEBI’s power to remove a director from his position in a listed entity;*

2. *SEBI's inducement of the stock exchanges to take action and / or enforce a direction which is not within its ambit.*
- *I submit that it would be germane to understand the concepts of **restraint** in contradistinction to the concept of **removal** in light of the relevant provisions of the SEBI Act, 1992 and the Companies Act, 2013.*
- *While the provisions of section 11(4) of SEBI Act are widely worded, it cannot be applied in brazen derogation or abrogation of the provisions of the Companies Act, 2013. The Companies Act does not vest any power in SEBI to remove directors. This power is consciously not included in the SEBI Act and has not been delegated under section 458 of the Companies Act, 2013. Section 24 of the Companies Act maintains "...listed companies or those companies which intend to get their securities listed on any recognized stock exchange in India, except as provided under this Act, be administered by the SEBI." The section acknowledges the fact that SEBI has the power to regulate the conduct of those entities mentioned above, but only in relation to **certain aspects and not others**, which continue to be governed by the provisions of the Companies Act, 2013 and not the provisions of the SEBI Act, 1992.*
- *Therefore, it is unequivocally and abundantly clear that the language used in the section uses the word "restraint" and clearly does not use the word "removal". Hence, SEBI has no power to remove a director, contrary to the provisions of the Companies Act, thereby making any action related to the same non-est, contrary to law and void.*
- *If one were to leave aside submissions on the powers of SEBI, I submit that in its effort to push through a power not granted under the provisions of the SEBI Act, SEBI may have negligently / steadfastly chosen to ignore that I have already resigned from my position as a Director in the company with effect from July 31, 2024.*
9. Through the same email dated September 5, 2024, the Noticee sought another date for personal hearing. Acceding to his request, another opportunity of personal hearing was given to him on September 11, 2024 vide email dated September 6, 2024. The Noticee once again failed to appear on the scheduled date. A final opportunity of personal hearing was given to the Noticee on October 1, 2024 to appear before the undersigned vide email dated September 20, 2024. Vide email dated September 30, 2024, the Noticee submitted, inter alia, the following:
- "In any event, and without prejudice to the generality of my submissions / contentions herein, the SCN still suffers from the following problems:*



1. *The SCN is for non-compliance of the Orders, and hence any Investigation Reports (at any stage of the proceedings) need to be shared / given to the Noticee. What assumes primary importance in the present matter is the interim Investigation Report, basis which the ex-parte Interim Order may have been passed. Copies of the Interim Investigation Report(s) with annexures, notes, marking and approval are yet to be provided;*
2. *SEBI continues to provide incomplete portions of documents, purportedly not disclosing certain portions including the names and designations of signatories and adjudicating officers. Complete / unredacted copies of internal orders dated February 23, 2024 and March 14, 2024 with relevant annexures are yet to be provided;*
3. *SEBI has now provided a letter dated June 14, 2018 from SEBI to the stock exchanges, which for reasons best known to SEBI was not provided earlier. Furthermore vide its letter dated June 06, 2024 SEBI had stated that the document was “not available in our records.” It is submitted that this is nothing short of a material suppression of facts by a regulator.*

*I would also like to reiterate that I have already resigned from my position as a Director in the company with effect from July 31, 2024, and hence no proceedings should be initiated against me, especially when the captioned SCN is untenable and contrary to law, in light of my detailed submissions.”*

10. He further requested for inspection of all original documents in the matter. Vide email dated October 1, 2024, the Noticee was given opportunity of inspection of documents on October 14, 2024 and subsequently an opportunity of personal hearing on October 21, 2024. Noticee did not avail the opportunity of inspection of documents nor sent any communication for not attending the same. Vide email dated October 18, 2024, i.e. on the eve of the personal hearing he requested for another opportunity of inspection of documents and a different date for personal hearing. Vide email dated October 18, 2024 his request for another date for inspection of documents was rejected and he was advised to appear before the undersigned on the scheduled date of personal hearing, i.e. October 21, 2024. On the date of personal hearing, the Authorised Representative (hereinafter referred to as “AR”) of the Noticee appeared and reiterated the submissions made vide replies dated May 16, 2024, July 11, 2024, September 5, 2024 and September 30, 2024. Vide email dated October 28 he made further submissions stating, inter alia, the following:

- *Penalty proceedings cannot be initiated for non-compliance under Section 15HB. And The provisions of Section 15HB cannot be utilized for imposition of penalty for non-compliance of an order of the WTM passed under Section 11B of the SEBI Act.*
  - *I rely on the SAT judgement in the matter of Annaswamy Venkatramani vs Sebi dated 28 June, 2023, for above findings.*
  - *Till pendency of SEBI appeal at Supreme court and no stay is granted by Supreme Court, finding of above order is Law of Land. Consequently, above order be treated as Law.*
- *WTM Order dated 22" June, 2023 should be read with recommendation of Interim investigation report (Preliminary Investigation Report):*
  - *IA recommend continuity of Mr. Sun ii Arjan Lulla with his present designation in Eros, however he was only to be restrained from making major decision without the approval of the board of directors.*
  - *It clearly narrates view of SEBI that "restrained as a director" and "removal from directorship" are two different things. Restrained from holding position of a director means to hold the position of director in restrained manner such as not to make any major decision without approval of the board of directors.*
  - *SEBI'S IA never intended to remove Mr. Su nil Arjan Lulla from directorship.*
  - *Even after understanding my interpretation of Interim Order, SEBI does not issue corrigendum order modifying "restrained as director" to "removal from directorship." In subsequent correspondence with noticee, SEBI tried to widen the scope of word "restrained from Directorship" to "Resign from Directorship", "Removal from Directorship.", "Step down from Directorship" etc.*
- *If I analyse above situation together with circular dated 20th June, 2018 passed by Stock Exchange pursuant to letter of SEBI dated 14th June, 2018, it clearly signifies that even SEBI is very well aware that SEBI does not have power to remove director and trying to assume such power by compelling Stock Exchange to enforce the order in a way it suits SEBI.*
- *Irregularity on the part of SEBI during proceedings and investigation:*
  - i) *SEBI is not following Principle of judicial Discipline.*
  - ii) *SEBI has not provided desired information and provided incorrect information during every stage of enquiry and investigation.*
  - iii) *SEBI is not providing inspection of original evidence.*

- iv) *SEBI did not accede to my request to postpone the hearing for 2 days as I was arranging for Senior Counsel. In light of the same I was unable to comprehensively address all issues raised by SEBI in its adjudication proceedings. This by itself is a violation of the principles of natural justice.*
- v) *Incomplete and redacted inspection of photocopy was provided during interim stage, inspite of requests for the complete documentation. This again is a suppression of material evidence and hence a violation of the principles of the natural justice.*
- vi) *In reply to request for Interim Investigation Report, SEBI replied that "No such Report". This is incorrect as I have access to selected portion of such reports provided to other related noticee. This again is a suppression of material evidence and hence a violation of the principles of the natural justice.*
- vii) *In response to my query asking to provide SEBI Act /Rules /Regulation /Guidelines, wherein it is mentioned that Order of Restraint as Director be treated as Removal of Directorship. SEBI provided incorrect reply, attaching some Portion of SEBI Act 1992, which was irrelevant.*
- viii) *In reply to my request to provide copy of SEBI letter dated 14" June, 2018 from SEBI to Stock Exchanges regarding enforcement of order. SEBI said it is "Not available in our records". This is incorrect and same was provided only after our repeated follow up. SEBI is hiding the relevant information, which is very material and important.*
- ix) *SEBI kept on providing incomplete portion of documents not disclosing certain portion, such as SEBI did not provide complete order of appointment of AO, Name and Designation AO and signatory is missing in such order, which is a part of SCN.*
- x) *Instead of providing desired information, SEBI kept on providing opportunities of hearing to portray compliance of natural justice. Before receiving desired information, hearing can not serve any purpose. This again is a suppression of material evidence and hence a violation of the principles of the natural justice.*
- xi) *SEBI has conveniently ignored and rejected the KPMG forensic report which took almost 17 months to be completed with significant time, effort and resources on my behalf. Further, SEBI is deliberately not providing the said forensic audit report. We have fully co-operated during the investigation and forensic audit, but SEBI is not conducting fair proceedings in the matter.*
- xii) *We have already explained certain irregularity in our past oral and written submissions detail during personal hearing. Please take cognisance of same. Please go through list of information asked for and information provided by SEBI, to understand discrepancy on part of SEBI.*

## **CONSIDERATION FOR ISSUES, EVIDENCE AND FINDINGS**

11. The facts and circumstances of the case and the material available on record have been taken into consideration. The issues that arise for consideration in the present case are:

**ISSUE (a)- Whether Noticee has failed to comply with SEBI directions given vide interim order dated June 22, 2023?**

**ISSUE (b)- Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act?**

**ISSUE (c)- If so, how much penalty should be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?**

12. Before the discussing the merit of the case, the preliminary issues raised by the Noticee shall be discussed. It is noted that Noticee submitted that he was not provided with the copy of the interim investigation report which is the basis of the ex-parte order dated June 22, 2023. It is noted that in the confirmatory order dated October 13, 2023, it is clearly stated that when the Noticee sought for inspection of interim investigation report, the request was rejected as no such interim report was prepared. The Noticee was also informed that investigation in the matter is under progress. It is observed that after the initiation of adjudication, the Noticee sought for “complete copy of the SEBI Investigation Reports with all enclosures, prepared and approved by concerned Authority with notes, marking and approval”. Copy of the investigation report along with the annexures was provided to the Noticee vide letter dated August 1, 2024. Therefore, his submission that copy of investigation report was not provided to him, does not stand.
13. Noticee further submitted that incomplete portions of documents without disclosing names and designations of signatories were provided to him instead of complete/ unredacted copies of internal orders. It is noted that vide letter dated August 1, 2024,

redacted copies of internal orders with signatures of competent authority relevant to the Noticee was provided to him. The Noticee could not provide any reason as to why he required complete copy of internal orders wherein details of third parties totally unrelated to the current proceedings was mentioned. In view of the above, it is noted that there is no merit in his contention.

14. It is noted that Noticee has referred to an order of Hon'ble Securities Appellate Tribunal (hereinafter referred to as "SAT") in the matter of Annaswamy Venkatramani v SEBI wherein it was stated "...we are of the view that the provisions of Section 15HB cannot be utilized for imposition of penalty for non-compliance of an order of the WTM passed under section 11B of the SEBI Act."
15. Section 15HB of the SEBI Act provides for the penal liability of an entity for its failure to comply with any provision of SEBI Act, the rules, regulations or directions issued by SEBI thereunder for which no separate penalty has been provided. There can be no ambiguity in the interpretation of 'directions'. When an order under sections 11(1), 11(4) and 11B of SEBI is passed by SEBI, they qualify as "directions issued by the Board", non-compliance of which can entail penalty under section 15HB of SEBI Act.
16. Noticee has also submitted that the said order (Annaswamy Venkatramani v SEBI) is appealed by SEBI and the same is pending before the Hon'ble Supreme Court of India (hereinafter referred to as "SC"). It is noted that the same issue was discussed in the order of Hon'ble SAT in the matter of Kanaiyalal Baldevbhai Patel v SEBI (order dated July 20, 2022). It is further noted that vide order dated November 4, 2022, Hon'ble SC, while issuing notice in the matter has stated "*Until further order, having regard to the fact that this Court is seisin over the dispute involved in both these appeals, **the order impugned will not be treated as precedent by the Tribunal.***" Therefore, the contention of the Noticee that the order of Hon'ble SAT is Law of Land is not accepted.
17. An interim ex-parte order is passed pursuant to preliminary examination by SEBI. There is no preliminary investigation report prepared in the matter. The extracts of the document referred to the Noticee in his submission dated October 28, 2024 is an

internal preliminary examination note. Pursuant to the passing of the interim ex-parte order dated June 22, 2023 the Noticee was given an opportunity to submit his reply which was considered before passing the confirmatory order dated October 13, 2023. The preliminary internal examination note gave only a recommendation. It may be noted that the Whole Time Member (hereinafter referred to as “**WTM**”) is under no obligation to go by the recommendation. He can exercise his own judgment while passing any order after analysing the facts and circumstances. Thus, in the instant case, WTM after analysing the preliminary facts took an independent view and directed that:

*"Noticee 4 (Mr. Sunil Arjan Lulla) was restrained from holding the position of a Director or a Key Managerial Personnel in any listed company, including Eros, or its subsidiaries or any SEBI registered intermediary until further Orders."*

18. In regard to the irregularities on the part of SEBI during adjudication proceedings, brought out by the Noticee, it is addressed as follows:

	<b>Issue Raised</b>	<b>Observation</b>
i)	<i>SEBI is not following Principle of judicial Discipline.</i>	This is a general and vague comment. However, as already discussed in para 16 SEBI is not in non-compliance of principle of judicial discipline.
ii)	<i>SEBI has not provided desired information and provided incorrect information during every stage of enquiry and investigation.</i>	No comment as this is not in the purview of the present proceedings. However it may be noted that the information has been collected from the entities and the SCN provides the details of the information for which the entity is being charged
iii)	<i>SEBI is not providing inspection of original evidence.</i>	The Noticee was provided an opportunity of inspection of documents by letter dated October 4, 2024 on October 14, 2024. Noticee failed to avail the same and on the eve of the date of personal hearing scheduled on October 21, 2024 sought for another opportunity of inspection of documents. No reason was given by the Noticee for not appearing on the date of inspection and also not informing about not appearing for the inspection

iv)	<i>SEBI did not accede to my request to postpone the hearing for 2 days as I was arranging for Senior Counsel. In light of the same I was unable to comprehensively address all issues raised by SEBI in its adjudication proceedings. This by itself is a violation of the principles of natural justice.</i>	This is not true narration of facts. Noticee was provided four opportunities of personal hearing on dates on September 6, 2024, September 11, 2024 and October 1, 2024 with reasonable time for appearing for the same. However, the entity did not appear on any scheduled date. Final opportunity of personal hearing was provided to him on October 21, 2024. Vide email dated October 18, 2024 entity requested for another date for inspection of documents followed by a fresh date for personal hearing which was rejected during these proceedings. Entity's action indicated that he was prolonging the proceedings in the guise of making vague request documents which are not relevant to him. It is clear from the proceedings that all attempts have been made to provide him all the relevant information.
v)	<i>Incomplete and redacted inspection of photocopy was provided during interim stage, inspite of requests for the complete documentation. This again is a suppression of material evidence and hence a violation of the principles of the natural justice.</i>	No comment as this is not in the purview of the present proceedings.
vi)	<i>In reply to request for Interim Investigation Report, SEBI replied that "No such Report". This is incorrect as I have access to selected portion of such reports provided to other related noticee. This again is a suppression of material evidence and hence a violation of the principles of the natural justice.</i>	As earlier mentioned this is another baseless request of the Noticee. It has been time and again mentioned to the Noticee and also mentioned in the confirmatory order that such a document does not exist, however the entity continues to pursue this request.
vii)	<i>In response to my query asking to provide SEBI Act /Rules /Regulation /Guidelines, wherein it is mentioned that Order of Restraint as Director be treated as Removal of Directorship. SEBI provided</i>	It is noted that provisions of section 11(1) and 11B(1) of SEBI Act was attached which gives SEBI wide amplitude and empowers SEBI to craft directions which are attuned to the facts and circumstances of the case.

	<i>incorrect reply, attaching some Portion of SEBI Act 1992, which was irrelevant.</i>	
viii)	<i>In reply to my request to provide copy of SEBI letter dated 14th June, 2018 from SEBI to Stock Exchanges regarding enforcement of order. SEBI said it is "Not available in our records". This is incorrect and same was provided only after our repeated follow up. SEBI is hiding the relevant information, which is very material and important.</i>	The copy of the said letter was not available in the records of SEBI while replying to the Noticee . However, subsequently when the document was made available the same was shared with the Noticee. Hence contention of the Noticee is baseless.
ix)	<i>SEBI kept on providing incomplete portion of documents not disclosing certain portion, such as SEBI did not provide complete order of appointment of AO, Name and Designation AO and signatory is missing in such order, which is a part of SCN.</i>	The relevant portion of the order for appointment of AO was provided to the Noticee. There had been internal transfer of AO for which copy of the order was provided to the Noticee. It is noted that the signature of the Competent Authority was clearly visible in the order.
x)	<i>Instead of providing desired information, SEBI kept on providing opportunities of hearing to portray compliance of natural justice. Before receiving desired information, hearing can not serve any purpose. This again is a suppression of material evidence and hence a violation of the principles of the natural justice.</i>	SEBI , from the very first instance has not suppressed any information and shared with the Noticee all the documents available on record. Following the principles of natural justice, more than one opportunity of personal hearing was given to the Noticee.
xi)	<i>SEBI has conveniently ignored and rejected the KPMG forensic report which took almost 17 months to be completed with significant time, effort and resources on my behalf.</i>	Not part of the current proceedings.



	<i>Further, SEBI is deliberately not providing the said forensic audit report. We have fully co-operated during the investigation and forensic audit, but SEBI is not conducting fair proceedings in the matter.</i>	
xii)	<i>We have already explained certain irregularity in our past oral and written submissions detail during personal hearing. Please take cognisance of same. Please go through list of information asked for and information provided by SEBI, to understand discrepancy on part of SEBI.</i>	Same has been taken on record.

19. As the preliminary objections raised by the Noticee is dealt with, the merits of case shall now be discussed.

**ISSUE (a)- Whether Noticee has failed to comply with SEBI directions given vide interim order dated June 22, 2023.**

20. It is noted that SEBI passed an ex-parte Interim Order dated June 22, 2023 in the matter of Eros wherein it was *inter-alia* directed that:

*"Noticee 4 (Mr. Sunil Arjan Lulla) was restrained from holding the position of a Director or a Key Managerial Personnel in any listed company, including Eros, or its subsidiaries or any SEBI registered intermediary until further Orders."*

21. It is observed that Noticee had appealed the interim order before Hon'ble SAT and vide order dated August 22, 2023 noted that, "24. *In view of the aforesaid, we do not find any reason to interfere with the Interim Order at this stage and we dispose of the appeal directing the appellants to file reply /objection along with a stay vacation application to the ad-interim ex-parte order dated 22<sup>nd</sup> June, 2023 within three weeks from today.*"

22. Further, vide order dated October 13, 2013, the interim order was confirmed by SEBI. Noticee submitted that he had restrained himself from participating in the affairs of the company in contra-distinction to not resigning from the position of a director. He further submitted that SEBI's inducement of the stock exchanges vide memo of SEBI dated June 14, 2018 to take action and / or enforce a direction indicates that it is not in SEBI's ambit to remove the director.
23. SEBI, being the regulator of the securities market can take several measures to protect the interests of the investors. In the present case, pursuant to preliminary examination it was prima facie revealed there was siphoning of funds to various entities of Eros. Noticee was the Managing Director of the company. To protect the interests of the investors, vide interim order dated June 22, 2023 he was restrained **from holding the position of a director**. However, Noticee continues holding the position of a director of Eros. In this case his submission that he had restrained himself from participating in the affairs of the company does not mean compliance of SEBI order as he was still holding the position of a director. In view of the above, there is no merit in the submission of the Noticee.
24. Further Noticee submitted that it was not under the power of SEBI to remove him from directorship. SEBI, as a watchdog of the securities market can take all measures to protect the interests of the investors, promote the development of and regulate the securities market. Vide the memo dated June 14, 2018 referred to by the Noticee it had directed the stock exchanges to put in place a comprehensive mechanism through which the compliance of SEBI orders in regard to holding of position of directors in any listed company can be monitored. It, in no way signifies that SEBI does not have the power to restrain any person from holding the position of a director. Therefore, the submission of Noticee in this regard is not accepted.
25. Noticee further submitted that he had resigned from his position with effect from July 31, 2024. It is noted that the interim order was passed on June 22, 2023, wherein he was directed to restrained from holding the position of a director. It is noted that he resigned with effect from July 31, 2024 i.e. more than 13 months, that too only after receiving the notice before launching of prosecution dated July 4, 2024 by SEBI

against him. This shows the recalcitrant nature of the Noticee. Therefore, it is observed that he was not compliant with the order of SEBI from June 22, 2023 to July 31, 2024.

26. It is noted that the Noticee was the Managing Director of Eros who was at the helm of all the affairs of the company. If person of his position flouts the directions given by the securities market regulator, it should be viewed even more seriously. His action showed complete disregard to the regulator which is completely unbecoming of a person at his position.

**ISSUE (b)- Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act?**

27. In context of the above, the observations of Hon'ble Supreme Court in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006] 5 SCC 361} are referred to wherein the Hon'ble Court had observed: *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant."*
28. Therefore, the aforesaid violation committed attract monetary penalty under section 15HB of the SEBI Act The text of provision is reproduced hereunder:

***Section 15HB of SEBI Act: - Penalty for contravention where no separate penalty has been provided:***

*Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

**ISSUE (c)- If so, how much penalty should be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?**

29. While determining the quantum of penalty under SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act which reads as under:

*Factors to be taken into account by the adjudicating officer under SEBI Act*

*15J. While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default*

30. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of its non-compliance. However, it is noted that Noticee continued to be non-compliant with the order of SEBI for more than 13 months.

## **ORDER**

31. Having considered the facts and circumstances of the case, the factors mentioned in section 15J of SEBI Act and also taking into account judgment of the Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90 and in exercise of power conferred under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules a penalty of Rs.50,00,000/- (Rupees Fifty Lakh only) is imposed on the Noticee. The said penalty is commensurate with the lapse/omission on the part of the Noticee.
32. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. [www.sebi.gov.in](http://www.sebi.gov.in) on the following path, by clicking on the payment link: ENFORCEMENT → Orders → Orders of AO → PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at [portalhelp@sebi.gov.in](mailto:portalhelp@sebi.gov.in).

33. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to Securities and Exchange Board of India.

**DATE: October 30, 2024**

**PLACE: MUMBAI**

**BARNALI MUKHERJEE  
ADJUDICATING OFFICER**